

### **REMARKS**

This responds to the Office Action dated January 25, 2010.

Claims 1, 33, and 34 are amended, no claims are canceled, and no claims are added; as a result, claims 1, 4-10, 13-31, 33-42, 44-54, and 56-60 are now pending in this application.

Applicant respectfully submits that the amendments to these claims are fully supported by the originally-filed application (e.g., p. 9, lines 18-27) and that no new matter has been added by way of these amendments.

#### **The Rejection of Claims Under § 101**

Claims 1, 4-10, 13-31 and 33 were rejected under 35 U.S.C. 101. Applicant has amended claims 1 and 33 to address the remarks in the Office Action. Applicant respectfully submits that claims 1 and 33 comply with § 101 and requests reconsideration and withdrawal of the § 101 rejections of claims 1 and 33, and claims 4-10 and 13-31 which depend therefrom.

#### **The Rejection of Claims Under § 112**

Claims 34-42, 44-54 and 56-60 were rejected under 35 U.S.C. 112, second paragraph. Applicant has amended claim 34 to clarify the claimed subject matter. Applicant respectfully submits that claim 34 complies with § 112 and requests reconsideration and withdrawal of the § 112 rejection of claim 34 and claims 35-42, 44-54 and 56-60 which depend therefrom.

#### **The Rejection of Claims Under § 103**

1. Claims 1, 4-10, 13-14, 16-17, 26-27, 30, 33-42, 44-46, 49, 53 and 54 were rejected under 35 U.S.C. 103(a) Nelson et al. (U.S. Patent No. 6,654,104; hereinafter “Nelson”) in view of Xydis (U.S. Patent No. 6,307,471).

#### **Concerning independent claim 1:**

Applicant cannot find in the cited portions of Nelson or Xydis any disclosure of “an electronic recognition module ... to detect the proximity recognition system in the implantable medical device, uniquely identify the implantable medical device using the proximity recognition system, and grant a person implanted with the implantable medical device access to patient

health data via the information access portal without further action by the person,” as amended claim 1 recites.

The Office Action concedes that Nelson is silent with respect to this feature<sup>1</sup> and relies on Xydis to rectify this deficiency.

Xydis refers generally to a radio based proximity token with multiple antennas.<sup>2</sup> Apparently, Xydis discloses that a token allows a user access to a device, but to operate the device, the user is then required to identify “himself by way of logging into the computer.”<sup>3</sup> As Xydis discloses, “[t]his is accomplished by password entry, biometrics, or any other method as is known in the art of verifying a users (*sic*) identity.”<sup>4</sup>

In contrast to Xydis’ disclosed two-step mechanism to operate a device, the present claims recite granting access to patient health data via an information access portal without any further action by the user. Applicant’s one-step mechanism may be advantageous, for example, in the case of patients of low capacity who may not be able to remember usernames and passwords or complete other tasks related to biometric authentication.

Claim 33 recites “an electronic recognition module configured to detect the proximity recognition system in the implantable medical device, uniquely identify the implantable medical device using the proximity recognition system, and grant a person implanted with the implantable medical device access to patient health data and other information via the publicly accessible information access portal, without further action by the person” and Applicant respectfully submits that Nelson and Xydis, either alone or in combination, fail to disclose such features, as discussed with respect to claim 1.

Claim 34 recites “granting the person access to a publicly accessible information access portal when the electronic recognition module positively identifies the person as one with a right to access the publicly accessible information access portal, conveying information in the form of physiometric data to the identified person through the information access portal, and conveying other information to the identified person through the information access portal without further

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<sup>1</sup> Office Action of January 25, 2010 at p. 5.

<sup>2</sup> Xydis at Title.

<sup>3</sup> Id. at col. 4, lines 22-25.

<sup>4</sup> Id. at col. 4, lines 25-27.

action by the person” and Applicant respectfully submits that Nelson and Xydis, either alone or in combination, fail to disclose such features, as discussed with respect to claim 1.

Thus, because Nelson and Xydis, either alone or in combination, fail to teach or suggest all elements of claims 1, 33, and 34, Applicant respectfully submits that a *prima facie* case of obviousness cannot be established. As such, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of these claims.

Concerning dependent claims 4, 13, 14, 16, 17, 26, 27, 30, 35-36, 44-46, 49, 53 and 54:

Claims 5-10 and 37-42 appear to have been rejected over Nelson in view of Xydis.<sup>5</sup> As such, Applicant is responding to these rejections with the group of claims identified with the header “12.” at page 4 of the Office Action.<sup>6</sup>

A claim in dependent form shall be construed to incorporate by reference all of the limitations of the claim to which it refers. 35 U.S.C. § 112 ¶4. Thus, if a reference does not anticipate or render obvious a base claim, the reference does not anticipate or render obvious a claim that depends on the base claim.

Applicant respectfully submits that the dependent claims 4-10, 13, 14, 16, 17, 26, 27, 30, 35-42, 44-46, 49, 53 and 54 depend directly or indirectly from independent claims 1, 33 or 34, respectively. As such, these dependent claims incorporate all the recitations of claims 1, 33 or 34. Accordingly, Applicant respectfully submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of the rejections of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

2. Claims 14, 17, 49 and 53 were rejected under 35 U.S.C. 103(a) over Nelson and Xydis and in further view of Leven (U.S. Publication No. 2004/0172290).

3. Claims 21-22, 24-25, 28-29, 31 and 50 were rejected under 35 U.S.C. 103(a) over Nelson in view of Xydis and in further view of Seigel et al. (U.S. Publication No. 2001/0051879; hereinafter “Seigel”).

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<sup>5</sup> Office Action of January 25, 2010 at p. 10.

<sup>6</sup> Office Action of January 25, 2010 at p. 4.

4. Claims 19-20, 47 and 48 are rejected under 35 U.S.C. 103(a) over Nelson in view of Xydis and in further view of Kalgren et al. (U.S. Publication No. 2002/10077562; hereinafter “Kalgren”).
5. Claims 15, 18 and 51 are rejected under 35 U.S.C. &sect; 103(a) over Nelson in view of Xydis and in further view of Leven and Seigel and Konrad (U.S. Patent No. 5,544,320).
6. Claims 23 and 52 are rejected under 35 U.S.C. 103(a) over Nelson in view of Xydis, and in further view of Seigel and Konrad.
7. Claim 60 is rejected under 35 U.S.C. 103(a) over Nelson in view of Xydis, and in further view of Seigel and Treyz et al. (U.S. Patent No. 6,526,335; hereinafter “Treyz”).
8. Claims 56-59 are rejected under 35 U.S.C. 103(a) over Nelson in view of Xydis and in further view of Iliff et al. (U.S. Patent No. 6,234,964; hereinafter “Iliff”).

Applicant respectfully submits that the remaining dependent claims depend directly or indirectly from independent claims 1, 33 or 34, respectively. As such, these dependent claims incorporate all the recitations of claims 1, 33 or 34. Accordingly, Applicant respectfully submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of the rejections of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

#### Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner’s personal knowledge, rather than any objective evidence of record as

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manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**CONCLUSION**

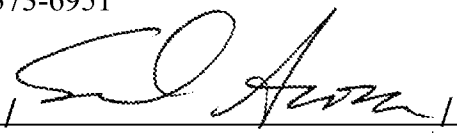
Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date June 24, 2010

By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24th day of June, 2010.

Nellie Nuhring

Name



Signature